



U.S. AIR FORCE



***I n t e g r i t y - S e r v i c e - E x c e l l e n
c e***

Justification and Approval (J&A) Training



Date: *Apr 2006*

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Overview

- Objectives
- Terminology
- Purpose and Explanation
- Format and Examples
- Conclusion



Objective



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- When is a J&A required and is it a stand-alone document?
- What are the review and approval thresholds?
- What authorities apply? (Seven statutory authorities)
- What is the proper J&A format?
- What are some common rework reasons?
- Simplified Acquisition Procedures (Sole Source Justification)
- Why Seek Competition?
- Why Training?
- Key Players In Competition
- Requirements for Smart Business Decisions



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Terminology



- Full & Open Competition - FAR 6.1
 - 10 U.S.C. 2304 requires, with certain limited exceptions, that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts. Full and open competition means that all responsible sources are permitted to compete.



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Terminology (continued)



- Full & Open Competition After Exclusion of Sources - FAR 6.2
 - **Agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines to do so. Every proposed contract action under the authority of this section shall be supported by a Determination and Findings (D&F) signed by the head of the agency or designee. This D&F shall not be made on a class basis.**
 - Support Congressional Socioeconomic Programs
 - Set-asides for small business concerns
 - Set-asides for HUBzone small business concerns
 - Section 8(a) competition
 - Set-asides for Service-Disabled, Veteran-Owned Small Business

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Terminology (continued)



- Other Than Full & Open Competition - [FAR 6.3](#)
 - 10 U.S.C. 2304(c) authorizes, under certain conditions, contracting without providing for full and open competition. When not providing for full and open competition, the contracting officer shall solicit offers from as many potential sources as is practicable under the circumstances.
- J&A's obtain approval for contracting without full and open competition



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Statutory Authority

- 41 United States Code (U.S.C.) 253(c) and 10 United States Code (U.S.C.) 2304(c) are the statutory authorities for contracting without providing for full and open competition.
- The Department of Defense (DOD) is subject to 10 U.S.C. 2304(c) as our statutory authority. Each contract awarded without providing for full and open competition shall contain a reference to the specific authority under which it was so awarded.
 - Contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts, with certain limitations.
 - Does not necessarily mean full and open competition exists
 - Even if full and open competition does not exist, the CO is required to solicit offers from as many potential sources as practicable under the circumstances
 - An approved J&A does not authorize the rejection of proposals from other offerors
- Competition is the rule not the exception!!!!



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When is a J&A Required?



- When using other than full and open competition
- Some form of written documentation is normally required
 - J&A, D&F, IACR, Sole Source Justification
- There are seven statutory exceptions to full and other competition



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Exceptions from J&A Requirements



- Simplified Acquisition Procedures
 - Use a Sole Source Justification
 - Use Commercial Item Procedures

- Within Scope Contract Modifications
 - Changes
 - Options



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Exceptions to J&A Requirements (continued)



- Contracts Expressly Authorized by Statute
 - Set Asides
 - Small Business
 - 8-A Program
 - HUBZone Act
 - Federal Supply Schedules
- Orders
 - Placed under Requirements Contracts or Definite-Quantity Contracts
 - Placed under Indefinite-Quantity Contracts when-
 - All responsible sources were permitted to compete
 - The J&A adequately covers all requirements of the order
 - Placed against Task Order or Delivery Order Contracts



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Review and Approval Thresholds



- Approval authorities
 - Under \$500K - local approval
 - \$500K to \$10M - Command Competition Advocate
 - \$10M to \$75M - HCA or designee (if meets criteria at FAR 6.304(a)(3) (must be GO or SES))
 - Over \$75M - Senior Procurement Executive
 - Submit through SAF/AQCK
 - Allow 30 days for staffing



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Exceptions to full and open competition

(Per FAR 6.302)



Authorities

- Only One Responsible Source..... (FAR 6.302-1)
- Unusual and Compelling Urgency..... (FAR 6.302-2)
- Industrial Mobilization; Developmental or Research Capability; or Expert Services.....(FAR 6.302-3)
- International Agreement.....(FAR 6.302-4)
- Authorized by Statute.....(FAR 6.302-5)
- National Security.....(FAR 6.302-6)
- Public Interest.....(FAR 6.302-7)



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Only One Responsible Source (or limited number)



Reference 10 USC 2304(c)(1) as implemented by FAR 6.302-1

- Most Common Exception
- Only Available from one or a limited number of responsible sources
 - Unsolicited research proposal
 - Follow-on for continued development or production of highly specialized equipment
 - Follow-on for continued provision of highly specialized services
 - Are there limited data rights, patents, copyrights, secret processes?
 - Is there sole control of basic raw material?



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Only One Responsible Source (continued)



- Brand Name
 - Does not provide for full & open competition
 - Brand name must be justified and approved
- To do otherwise would harm the Government
- Key points for justification
 - Ability to validate assumptions regarding the specified sources unique capabilities
 - Identify all sources that expressed interest in the requirement, and details regarding the evaluation of their capabilities
 - Thoroughly describe unique capabilities or qualifications that form basis of the justification
 - If absence of required data or limited rights data involved: Document the actions taken to obtain missing data or to validate, challenge or otherwise remove the impediment



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Unusual and Compelling Urgency



Reference 10 USC 2304(c)(2) as implemented by FAR 6.302-2

- Most Scrutinized
- Unusual and compelling urgency precludes full and open competition
- Award delay would result in serious injury, financial or otherwise to the Government
- Must identify harm to Government
 - Applies when the need for supplies or services is of such an unusual and compelling urgency that the government would be seriously injured unless the number of sources solicited is limited to those specified
 - Appropriate when an unusual urgency precludes full and open competition, and delay of the award would result in serious injury, financial or other, to the government
 - Initial response to crisis (e.g. Hurricane Katrina & 9/11)



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Unusual and Compelling Urgency (Continued)



- Key points for justification
 - Quantify the nature of the serious injury
 - Identify financial obligations of the government
 - Estimate the costs
 - Identify basis of the estimate
 - Identify potential personnel injuries or loss of life
 - Describe the conditions creating the situation
 - Why no other action than the planned acquisition could avert the situation
 - Explain the impaired defensive capability if the posture of the U.S. would be seriously jeopardized
 - Extent to which competition is limited
 - Demonstrate how competition was obtained, given the circumstances
 - If circumstances are similar to those cited under exception 1 (only one responsible source), detail these impediments



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Industrial Mobilization; Engineering, Developmental, or Research Capability, or Expert Services



Reference 10 USC 2304(c)(3) as implemented by FAR 6.302-3

- Maintain facility, producer, manufacturer, or supplier in case of emergency/mobilization
- Establish/maintain essential capabilities by educational, non-profit institution, or federally-funded R&D center
- Acquire expert services for litigation/dispute
- Key points for justification
 - Demonstrate the need to maintain the capability possessed by the identified source(s) - Some form of market survey may be critical in demonstrating the uniqueness of this capability
 - FFRDC the need to maintain the capability is inherent in the source's designation as an FFRDC
 - Explain why no actions are planned or underway are planned to pursue future competition, if applicable



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International Agreement



Reference 10 USC 2304(c)(4) as implemented by FAR 6.302-4

- No Competition Advocate review
- Procurement is on behalf of foreign country or international organization for non-U.S. customers
 - Written direction such as Letter of Offer and Acceptance (LOA), or
 - Services performed or supplies used in country's sovereign territory
- Foreign country directs the source
- Key points for justification
 - International Agreement Competitive Restrictions (IACR) used rather than a J&A
 - Copy of pertinent parts of the documentation that restricts competition
 - FAR 5.202(a)(3) permits an exception to the requirement to publicize the proposed contract action



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Authorized by Statute



Reference 10 USC 2304(c)(5) as implemented by FAR 6.302-5

- Mandatory sources: i.e., UNICOR (Federal Prison Industries)
- Qualified Nonprofit agencies for Blind or Severely Handicapped
- Government Printing and Binding
- 8a Awards
- Disaster Relief and Emergency Assistance
- Applies when a statute expressly authorizes that the acquisition be made through another agency, or from a specified source, or the agency's need is for a brand name or commercial item for authorized resale, the government may limit competition
- A J&A is not required
 - Qualified non-profit agencies for the blind or severely handicapped (FAR 8.7)
 - Sole source awards under 8(A) (FAR 19.8)
 - Commercial items for authorized resale at a commissary or similar facility
 - Statute expressly requires the procurement to be made from a specified source
- J&A required
 - Federal Prison Industries (Unicor) (FAR 1.6)
 - Government Printing and Binding (FAR 8.8)



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National Security



Reference 10 USC 2304(c)(5) as implemented by FAR 6.302-5

- Disclosure would compromise national security
 - violate security requirements
- Key points for justification
 - ➔ Documentation is limited to the minimum essential information to establish the validity of the justification.
 - The J&A could be a classified document
 - Special handling procedures could exist for process the documentation to the approval authority



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Public Interest



Reference 10 USC 2304(c)(7) as implemented by FAR 6.302-7

- Extremely rare
- Requires written determination by Secretary of Defense or Secretary of Air Force to be in Government's best interest
- May only use if no other authority appropriate
- Notify Congress not less than 30 days prior to award
- Key points for justification
 - Describe the reasons full and open competition is not in the public interest
 - Describe why no other authority is appropriate



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J&A Format



- Justification Review Document(JRD)
 - Signature Cover Page
 - JRD and Justification comprise the J&A
 - Final Acquisition Action Approval (FAAA)
(Removed from AFFARS)
- Justification Parts I-XIII
 - Identify heading as: Justification for Other Than Full and Open Competition



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Doing a Good J&A - A Comparison



Overall:

Bad J&A

versus

Good J&A

- | | |
|--|---|
| <ul style="list-style-type: none">■ Thrown together at last minute and reflected in quality of document.■ Doesn't fit together■ No market research or other homework | <ul style="list-style-type: none">■ Well thought out and organized. Fills all categories from guide and template■ Customer and buyer got together as user began work on J&A to make sure preliminary work done properly■ Adequate market research |
|--|---|



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I. Contracting Organization



- Identify the Contracting Officers name and office symbol
- Identify the Contracting Officers address
- DSN Number
- Identify PR Number



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II. Description of Action



- Upon approval to use other than full and open competition procedures, the Air Force will procure ? from ? In support of ?
- State if PEO, DAC, or Other Contracting
- State if action is new contract, modification or extension
- State if action is Individual or Class
- Identify the type contract planned



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II. Description of Action (continued)



Bad J&A

versus

Good J&A

- | | |
|---|--|
| <ul style="list-style-type: none">■ Whatever the heck we can get someone to sign off on | <ul style="list-style-type: none">■ Firm, fixed price modification to contract F33601-96-C-1234 to extend existing contract for a period of one year to ensure support while working follow-on buy delayed at Congressional request. |
|---|--|



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III. Description of Supplies/Services



- Specifically describe the supplies or services to be acquired
- Total estimated cost and quantity including options.
- Provide acquisition history



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III. Description of Supplies/Services (continued)



Bad J&A versus Good J&A

- Service to keep some computer program thing from breaking.
- Gonna cost us \$400K
- Don't know if was competitive last time, so don't know if can make competitive

- Non-personal service for maint/improvement of proprietary software developed at vendor expense.
- Estimates based on objective analysis or prior costs and market research
- Competitive package to develop new system in process



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IV. Authority



- 10 USC 2304(c)(_) as implemented by FAR 6.302-_
 - For exception 1 there are two alternatives:
 - Only one responsible source
 - Limited number of responsible sources



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Applicability of Authority

Bad J&A

versus

Good J&A

- We think he's the only one who could do it and it'd be convenient to just give them a new contract

- The proposed contractor is the only source with available expertise to support the one year remaining on this program.
- Failure would cause the program to fail with total collapse of the specific aircraft ability to support the mission until replacement one year later



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V. Applicability of Authority



- Narrative discussion fully supporting the authority cited.
- Most detailed part of J&A



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VI. Efforts to Obtain Competition



- Describe efforts made to ensure offers are solicited from as many potential sources as practicable.
- Sources sought synopsis results.
- Statement that the proposed contract action will be synopsized.



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VI. Efforts to Obtain Competition (continued)

Bad J&A

versus

Good J&A

- | | |
|--|--|
| <ul style="list-style-type: none">■ None. we like the incumbent■ “I could have chosen to compete, but it would be easier not to.” | <ul style="list-style-type: none">■ Sources sought synopsis conducted (copy enclosed) to find out if there might be existing product or expertise available - no responses received■ Reviewed requirement to determine if could compete with different specifications - still no luck |
|--|--|



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VII. Fair and Reasonable Costs



- Contracting Officer Statement
 - Cost will be fair and reasonable.
 - Steps to ensure final contract price will be fair and reasonable.
 - Extent of cost or price analysis anticipated.
 - Certified cost or pricing data requirements



Fair and Reasonable Price

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Bad J&A

versus

Good J&A

- Yep, it's good - the incumbent told us so

- Anticipated contract price will be considered fair and reasonable. Conducted other than cost and price analysis review of historical records and compared to as near a comparison as can be made of similar work.



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VIII. Market Research



- Discuss market research conducted and describe results.
- Discuss if commercial item can satisfy requirement.



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Market Research

Bad J&A versus Good J&A

- | | |
|--|--|
| <ul style="list-style-type: none">■ Talked to incumbent who said no one else could do it.■ Looked at internet for ten minutes (mostly Dilbert cartoons) | <ul style="list-style-type: none">■ User and buyer talked to <u>named</u> experts in the specific field■ Talked with other possible users of similar items■ Performed internet search with <u>stated</u> parameters■ Reviewed <u>named</u> journals and technical magazines■ Publicized in CBD |
|--|--|



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IX. Other Facts



- Give any other facts supporting the use of Other Than Full and Open Competition (OTFOC).



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X. Interested Sources



- Identify sources that have expressed written interest



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XI. Steps to Foster Competition



- Action taken or to be taken for future acquisitions.
- Address efforts to ensure competition for future spare parts and maintenance.



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XII. CO's Certification



- CO determination the document is both accurate and complete
- See guide and FAR 6.303-2(a)12



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XIII.

Technical/Requirements Personnel's Certification



- Certification that any supporting data in J&A is accurate and complete
- See guide and FAR 6.303-2(b)



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Common Rework Reasons



- Description (III) unclear
- Authority (IV) doesn't match Applicability of Authority (V)
- PR not provided
- Attachments referenced
- Market Research results not included



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Requirements for Smart Business Decisions



- Contracting officer must:
 - Learn the marketplace
 - ➔ The decision to compete is based upon market research, not your customers desire to retain the incumbent
 - Seek the advice of your competition advocate
 - Emphasize minimum requirements
 - Design an acquisition strategy that supports competition
 - Understand the authorities at FAR 6.3 (Other Than Full and Open competition)
- Coding the DD350 and reporting the contract award correctly in J001 (FPDS-NG future) is critical!
 - Information reported to congress
 - Official source for AF data



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FY 06 Competition Goals



MAJCOM/FOA/DRU	ASSIGNED GOAL
ACC	97%
AETC	97%
AFDW	75%
AFMC	42%
AFOTEC	98%
AFRC	95%
AFSOC	98%
AFSPC	62%
AMC	98%
PACAF	97%
USAFA	95%
USAFE	98%
AIR FORCE GOAL	55%

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Detailed Look

AFFARS 5306

- (5306.303-2) **Deletes** old MP 5306.3 on Justification & Approval (J&A) content. **Adds** new IG 5306 to cover content & adds list of **recommended** coordinating officials, by MAJCOM.
 - *NEW IG 5306 is now a J&A guide/template similar to AFMC J&A guide/template.*



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Detailed Look

AFFARS 5306(continued)

Highlight - New IG 5306 - J&A Guide/Template

- **Guide/template based with six chapters to include...**
 - **General info & J&A authorities**
 - **Procedures for J&A changes & Class J&As**
 - **Definitions**
 - **Templates by dollar value**
 - **Under \$500K**
 - **\$500K to \$10M**
 - **\$10M to \$75M**
 - **Over \$75M**
 - ***Template section includes additional MAJCOM unique coordinations and statement allowing for additional MAJCOM requirements***
 - *"In addition to the officials listed in the samples provided in this chapter, MAJCOM and local procedures may require additional coordination on J&As. For example:"*

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Detailed Look

AFFARS 5306(continued)

- (5306.304) **Adds** new MP 5306.304 on J&A approval levels. **New MP** takes old AFFARS language.
- (5306.304-93) **Deletes** IG 5306.304-93.
 - *General concepts moved to new IG 5306*
- **Reminder:** **AFAC 2006-0329** changed the legal review threshold for J&As to \$500K!



Summary



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- Competition is important & remains on SAF/AQC's radar scope
- Each MAJCOM has a competition goal & is measured against that goal
- Contracting workforce is the first line of defense
- Market research is the key
 - Know the marketplace
- Exemptions to competition are the exception, not the rule!!!
- Challenge your customer to think outside the paradigm
 - Recommend alternative sources
 - Offer solutions to getting the product/service your customer desires
- Coding the DD350 and reporting the contract award in J001 (FPDS-NG future) is critical!!!



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Pending Changes



- When the pending AFAC gets published, MP & IG numbers will change
- The new AFAC will formally incorporating most of the current AFMC J&A guide at the AF level into the new IG
- Some MAJCOMS may deviate from new \$500K legal review threshold



SAP Memo



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- For actions under \$100K a sole source justification can be used versus a J&A.
- See the notes section of this slide for an example.



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Questions?